

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

EARL H. SMITH,)	CIV. 14-5002-JLV
)	
Plaintiff,)	ORDER
)	OF DISMISSAL
vs.)	
)	
DR. FRANKIE DELGADO, and)	
DIRECTOR FT. MEADE VA)	
CENTER,)	
)	
Defendants.)	

On January 13, 2014, plaintiff Earl H. Smith filed a complaint alleging defendants engaged in medical malpractice by failing to prescribe him a pain medication strong enough to control his pain. (Docket 1). Mr. Smith also filed a motion to proceed *in forma pauperis*. (Docket 2). On January 22, 2014, Mr. Smith filed a motion to voluntarily dismiss the complaint. (Docket 5). Neither defendant has been served with the complaint. Fed. R. Civ. P. 41(a) allows a voluntary dismissal without prejudice if the motion is made before a responsive pleading is served. Accordingly, it is hereby

ORDERED that the complaint (Docket 1) is dismissed without prejudice and without an award or assessment of costs.

IT IS FURTHER ORDERED that the motion to proceed *in forma pauperis* (Docket 2) is denied as moot.

Dated January 27, 2014.

BY THE COURT:

/s/ Jeffrey L. Viken

JEFFREY L. VIKEN
CHIEF JUDGE